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19 OVERTURE SERVICES, INC.

20 UNITED STATES DISTRICT COURT  
21 NORTHERN DISTRICT OF CALIFORNIA  
22 SAN FRANCISCO DIVISION

23 OVERTURE SERVICES, INC., a  
24 Delaware Corporation,  
25 Plaintiff,  
26 vs.  
27 GOOGLE INC., a California Corporation,  
28 Defendant.

29 No. C02-01991 JSW (EDL)

30 **DECLARATION OF CHARLES M.**  
31 **MCMAHON IN SUPPORT OF**  
32 **OVERTURE'S UNOPPOSED MOTION**  
33 **TO SHORTEN THE BRIEFING AND**  
34 **HEARING SCHEDULE PURSUANT TO**  
35 **CIVIL LOCAL RULE 6-3**

1 I, Charles M. McMahon, declare as follows:

2       1. I am an associate at the law firm of Brinks Hofer Gilson & Lione, counsel  
 3 of record for plaintiff Overture Services, Inc. ("Overture") in this matter. I make this  
 4 declaration in support of Overture's Unopposed Motion for a Protective Order  
 5 Preventing Excessive Third Party Discovery. I make the following declaration based  
 6 upon my personal knowledge, and I could and would testify thereto under oath if called  
 7 upon to do so.

8       2. On June 19, 2003, Google Inc. ("Google") provided Overture with notice  
 9 that it had served twenty-five (25) subpoenas on third parties who may have advertised  
 10 with Overture's cost-per-click beta search system on or before May 28, 1998.

11       3. On July 21, 2003, Google notified Overture that it was serving subpoenas  
 12 on forty-six (46) additional third parties, seeking the same categories of documents as  
 13 Google's twenty-five (25) earlier subpoenas.

14       4. On July 23, 2003, I telephoned Christine P. Sun, counsel for Google, to  
 15 request that Google withdraw at least the last forty-six subpoenas and agree not to  
 16 serve any further subpoenas on third parties. Ms. Sun refused to do so, and explained  
 17 that Google plans to serve over 200 more third party subpoenas seeking the same  
 18 categories of documents.

19       5. Based upon Ms. Sun's representations, I understand that Google plans to  
 20 serve a total of approximately 300 such subpoenas. To prevent Google from pursuing  
 21 this excessive third party discovery, Overture is filing a Motion for a Protective Order  
 22 Preventing Excessive Third Party Discovery.

23       6. Overture seeks to shorten the briefing and hearing schedule for its Motion  
 24 for a Protective Order because under the normal schedule, the motion is likely to  
 25 become at least partly moot before it is heard by the Court. Under the normal discovery  
 26 motion briefing schedule, the Court would not hear Overture's Motion for a Protective  
 27 Order until at least 35 days from now. In that time, Overture expects that Google will  
 28 serve another round or two of subpoenas on third parties, potentially rendering

1 Overture's Motion for a Protective Order moot with respect to those subpoenas. Even  
 2 since July 23, 2003, when I met and conferred with Ms. Sun pursuant to Civil L.R. 37-  
 3 1(a), Google served another three subpoenas on third parties.

4       8. Another reason that Overture seeks a shortened briefing and hearing  
 5 schedule is that many of the subpoenas that Google already served are still pending.  
 6 The sooner the Court resolves this dispute between the parties, the more likely it will be  
 7 at least some of the third parties served with these subpoenas will be spared the  
 8 difficulty of responding to Google's excessive third party discovery.

9       9. On August 4, 2003, I telephoned Christine P. Sun, counsel for Google, to  
 10 request that Google agree to a shortened briefing and hearing schedule for Overture's  
 11 Motion for a Protective Order. I proposed that Google's opposition to Overture's Motion  
 12 for a Protective Order be filed no later than August 11, 2003, which is seven (7) days  
 13 after the motion filing date. I further proposed that the Court hear Overture's Motion for  
 14 a Protective Order on August 19, 2003, which is fifteen (15) days after the motion filing  
 15 date. I informed Ms. Sun that if the Court grants Overture's motion for a shortened  
 16 briefing and hearing schedule, then Overture would forego its right to file a reply brief.  
 17 Ms. Sun left me a voice message later that afternoon confirming that Google accepts  
 18 Overture's proposed schedule and will not oppose Overture's Motion for a Shortened  
 19 Briefing and Hearing Schedule Pursuant to Civil Local Rule 6-3.

20     10. There have been several modifications to the case management schedule  
 21 in this case. However, the present Motion to Shorten the Briefing and Hearing  
 22 Schedule does not affect the case management schedule. The parties currently are  
 23 preparing for a Claim Construction Hearing on October 22, 2003. Overture's Motion for  
 24 a Protective Order relates to Google's third party discovery, which does not bear on the  
 25 claim construction proceedings or any other deadlines in this case.

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1 I declare under penalty of perjury under the laws of the United States of America  
2 that the foregoing is true and correct. Executed this 4th day of August 2003 in Chicago,  
3 Illinois.

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7 *s/Charles M. McMahon*

8 Charles M. McMahon

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